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1 IN THE UNITED STATES DISTRICT COURT  
2 FOR THE DISTRICT OF ALASKA  
3 JOHN GILBERT, )  
4 Plaintiff, )  
5 vs. )  
6 APC NATCHIQ, INC. )  
7 Defendants. ) Case No. 3:03-CV-00174-RRB  
8 )  
9

DEPOSITION OF DOUGLAS L. SMITH  
June 1, 2006

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## 11 APPEARANCES:

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## FOR THE PLAINTIFF:

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## FOR THE DEFENDANTS:

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MR. KENNETH L. COVELL

Attorney at Law

712 Eighth Avenue  
Fairbanks, Alaska 99701

(907) 452-4377

MS. PATRICIA L. ZOBEL  
DeLisio Moran Geraghty &  
Zobel

Attorneys at Law

943 West Sixth Avenue  
Anchorage, Alaska 99501  
(907) 279-9574

MR. JOHN GILBERT

\* \* \* \*

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2	for their performance at their embedded location than	1	answered the question as to two individuals.
3	transferred to supervisor.	2	MS. ZOBEL: Well, two individuals that he
4	Q Okay. So if the specialist was having a product – or	3	talked to about whether it was -- whether it was exempt or
5	a work product problem, you'd go talk to the	4	not.
6	specialist and not Mr. Gilbert and say – is that	5	A Correct.
7	fair?	6	MS. ZOBEL: You're....
8	A No, John or I both may talk to that person. The	7	MR. COVELL: Well, I'm -- and in analyzing
9	supervisor or the manager may speak to that person on	8	whether it's exempt, part of the analysis is whether or
10	performance, but as I read – understand, this is to	9	not....
11	be more of an accountability perspective, that the	10	MS. ZOBEL: If....
12	supervisor would be accountable for the performance of	11	MR. COVELL: ....you do the same job or not.
13	his employees working under him.	12	MS. ZOBEL: If you're asking whether these two
14	Q Okay. And it's -- am I correct in understanding that	13	people believed believe that they did the same job, then he
15	you never did an analysis of any other positions	14	has a basis for answering. If you're asking for all the
16	besides Fort Greeley for APC or otherwise that	15	people, then he has -- it lacks foundation.
17	entailed this – the issue of whether or not an	16	MR. COVELL: Well, I asked for all the people,
18	individual would get paid for, quote, all hours	17	and he told me he couldn't answer as to most of them, but as
19	worked, unquote?	18	to two he could.
20	A That's correct.	19	MS. ZOBEL: Okay. So is this question....
21	Q Okay. All right. There are numerous people in the	20	MR. COVELL: And he was proceeding....
22	safety specialist and supervisor position, and	21	MS. ZOBEL: ....as to two or is this as to
23	numerous people have gone through those jobs. Do you	22	all?
24	think as a whole that they would agree or disagree	23	MR. COVELL: I -- and this question is in
25	with the proposition that largely the safety	24	clarification of the last question or two.
	supervisor did the same work as the safety specialist?	25	MS. ZOBEL: All right.
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1	A I can't draw that conclusion on the whole. I can only	1	MR. COVELL: Okay. It's....
2	speak to discussions with one or two employees about	2	Okay. In regards to the two people I spoke with....
3	their perception of the position.	3	(By Mr. Covell) Right.
4	Q Okay. And why don't you tell me about those one or	4	....their perception was that the position did not do
5	two – name the employees and tell me about the	5	safety specialist work as a routine function.
6	discussions?	6	Okay. Okay. As far as keeping records of hours that
7	A I spoke with Robert Carrier and Tom Mannix who were	7	Mr. Gilbert may have worked -- oh we don't need to do
8	both specialists at the time, and continue to be	8	that. Never mind.
9	specialists at Kuparuk, and asked them what their	9	MR. COVELL: Withdraw that.
10	perception was of the supervisor position in meeting	10	Q You didn't -- you did look at those pay records,
11	the activities that I felt made it exempt, and then	11	right?
12	their -- and their response to me was that they did	12	MS. ZOBEL: No, you've not shown him....
13	see that position as a position of authority with	13	MR. COVELL: Okay.
14	administrative responsibilities, and it seemed to meet	14	MS. ZOBEL: ....the pay records.
15	the intent of what I presumed their perception would	15	MR. COVELL: All right.
16	be, to make it an exempt position.	16	Q (By Mr. Covell) I'd represent to you in discovery we
17	Q Okay. But coming back to the question, would whether	17	have pay records for Mr. Gilbert. Some have indicated
18	or not – coming back to the question, would they	18	consistently 10 hours a day and some indicate one day
19	agree or disagree with the proposition that the safety	19	worked. Are you aware of any other records that might
20	supervisor largely did what a safety specialist did	20	indicate hours worked by Mr. Gilbert different than
21	and vice versa?	21	those, or would indicate things different than those?
22	MS. ZOBEL: You're asking him to tell you what	22	A Not at this time, no.
23	other people would think? If so, you're asking for	23	Q Okay. Mr. Gilbert submitted to the company what might
24	speculation.	24	be called a daily log which is sort of a day planner
25	MR. COVELL: Well, I think he just partially	25	and has some notes about what he did each day and then

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2 has a notation of hours, 12, 13, 14 and a half. Do  
 3 you have any information — assuming he represents that  
 4 those are the hours he worked those days, do you have  
 5 any information that would dispute that — whether or  
 not he actually worked those hours?

6 A No.

7 Q Okay. And is it true that when he worked as both  
 8 safety specialist and safety supervisor, that is, the  
 9 hours he worked varied?

10 A That is true.

11 MR. COVELL: Let's go off for just a minute  
 12 here.

13 (Off record)  
 14 (On record)

15 COURT REPORTER: We back on record at 1:20.

16 Q (By Mr. Covell) Mr. Smith, I've handed you a copy of  
 17 APC's response of February 17, '06 discovery request,  
 18 and I'd direct you to the second page there under  
 19 response. And there's a list of plaintiff's job  
 20 duties. We talked about the plaintiff's job duties,  
 21 and I just want to go through these and see if there  
 22 are consistencies with what we already talked about.  
 23 I think we already talked about developed, wrote and  
 24 implemented HSE department procedures. You agree he  
 25 did that, right?

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1 A I agree.

2 Q And then supervision and general oversight of the  
 3 safety specialists to determine work needs and took  
 4 steps necessary to facilitate department  
 5 functionality. Do you maintain that's something Mr.  
 6 Gilbert did as safety supervisor?

7 A I think that's generally correct.

8 Q Okay. Briefly, I don't want to go on this a long  
 9 time, what does facilitate department functionality  
 10 mean, if you know?

11 A Yeah, that would be to, for example — one example,  
 12 receive say a regulatory change or a policy change  
 13 from Conoco that would require implementation into our  
 14 practices, so we would interpret, place into  
 15 department functionality and institute those changes.

16 Q And that would be sort of part of the first one, too,  
 17 then, changing the book about it?

18 A It could be. The department functionality could maybe  
 19 be better described by shift scheduling, making sure  
 20 we had coverage at all locations.

21 Q Okay. And the next one, interpret testing results?

22 A That's correct.

23 Q Okay. Devise and implemented changes to department on  
 24 an on-going basis and as needed. Do you agree  
 25 with that as a duty? And I'll let you know right now

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1 the next question I'm going to ask you is what does  
 2 that mean.

3 A Yeah. I think that's maybe a repeat of some of the  
 4 prior statements. So, you know, implemented changes  
 5 could be those procedural changes due to regulatory  
 6 changes or policy changes. Changes might also include  
 7 maybe we have night shift activities that are sporadic  
 8 and meet coverage, you know, changes implemented,  
 9 devised, who's going to cover the night shift, and  
 10 when.

11 Q All right. Is it right that sort of your day, the  
 12 hope (ph) of your day was 12 hours and there wasn't a  
 13 night shift, but oftentimes your department had to  
 14 cover nighttime duties?

15 A We would typically only do that with additional  
 16 personnel or changing of work hours. So if a  
 17 specialist needed to cover night, he may work noon to  
 18 midnight and split the shifts, or be transferred to  
 19 the night shift.

20 Q All right. But it's not like the police station,  
 21 there's no midnight shift in....

22 A That's correct.

23 Q ....safety, right? Okay. All right. Hiring input  
 24 and veto rights. We already talked about that. I  
 25 think we covered that ground as to what you thought he

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1 could or couldn't do in that regard, right?

2 A I don't think entirely. I think you asked me if he  
 3 performed any disciplinary action or had hire and fire  
 4 authority correct?

5 Q Right.

6 A And in — as I look to that position, when we were  
 7 making changes to a department, when — and the  
 8 organization when through a metamorphosis quite a bit  
 9 during John's tenure, that that position was — was  
 10 consulted with on who was our top performers as we  
 11 were reducing personnel. You know, who were the  
 12 keepers and who were the guys who were at the bottom  
 13 of performance level.

14 Q Okay. All right. And we talked about — well, did he  
 15 ever discipline anybody that you know of?

16 A Not in my recollection was there any disciplinary  
 17 action handed out from that position.

18 Q Okay. All right.

19 A I'd like to clarify one thing.

20 Q Sure.

21 A That in my whole tenure there, I only took one  
 22 disciplinary action in the whole time, so it wasn't  
 23 very frequent.

24 Q Okay. Okay. Approval of timesheets and other  
 25 employee/management functions. Did the safety

19 (Pages 70 to 73)